



## Senate

General Assembly

**File No. 721**

January Session, 2009

Substitute Senate Bill No. 1127

*Senate, April 20, 2009*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING THE APPLICABILITY OF CERTAIN STATE CONTRACTING NONDISCRIMINATION REQUIREMENTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 4a-60 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2009*):

4 (a) Every contract to which the state or any political subdivision of  
5 the state other than a municipality is a party shall contain the  
6 following provisions: (1) The contractor agrees and warrants that in  
7 the performance of the contract such contractor will not discriminate  
8 or permit discrimination against any person or group of persons on the  
9 grounds of race, color, religious creed, age, marital status, national  
10 origin, ancestry, sex, mental retardation, mental disability or physical  
11 disability, including, but not limited to, blindness, unless it is shown  
12 by such contractor that such disability prevents performance of the  
13 work involved, in any manner prohibited by the laws of the United  
14 States or of the state of Connecticut. The contractor further agrees to

15 take affirmative action to insure that applicants with job-related  
16 qualifications are employed and that employees are treated when  
17 employed without regard to their race, color, religious creed, age,  
18 marital status, national origin, ancestry, sex, mental retardation,  
19 mental disability or physical disability, including, but not limited to,  
20 blindness, unless it is shown by such contractor that such disability  
21 prevents performance of the work involved; (2) the contractor agrees,  
22 in all solicitations or advertisements for employees placed by or on  
23 behalf of the contractor, to state that it is an "affirmative action-equal  
24 opportunity employer" in accordance with regulations adopted by the  
25 commission; (3) the contractor agrees to provide each labor union or  
26 representative of workers with which such contractor has a collective  
27 bargaining agreement or other contract or understanding and each  
28 vendor with which such contractor has a contract or understanding, a  
29 notice to be provided by the commission advising the labor union or  
30 workers' representative of the contractor's commitments under this  
31 section, and to post copies of the notice in conspicuous places available  
32 to employees and applicants for employment; (4) the contractor agrees  
33 to comply with each provision of this section and sections 46a-68e and  
34 46a-68f and with each regulation or relevant order issued by said  
35 commission pursuant to sections 46a-56, 46a-68e and 46a-68f; and (5)  
36 the contractor agrees to provide the Commission on Human Rights  
37 and Opportunities with such information requested by the  
38 commission, and permit access to pertinent books, records and  
39 accounts, concerning the employment practices and procedures of the  
40 contractor as relate to the provisions of this section and section 46a-56.  
41 If the contract is a public works contract, the contractor agrees and  
42 warrants that he will make good faith efforts to employ minority  
43 business enterprises as subcontractors and suppliers of materials on  
44 such public works project. Prior to entering into the contract, the  
45 contractor shall provide the state or such political subdivision of the  
46 state with a written representation to support the nondiscrimination  
47 agreement and warranty under subdivision (1) of this subsection for  
48 any contract valued at less than fifty thousand dollars for each year of  
49 the contract, and documentation in the form of a company or corporate

50 policy adopted by resolution of the board of directors, shareholders,  
51 managers, members or other governing body of such contractor to  
52 support the nondiscrimination agreement and warranty under  
53 subdivision (1) of this subsection for any contract valued at fifty  
54 thousand dollars or more for any year of the contract. The state or such  
55 political subdivision of the state may accept a prior resolution of such  
56 contractor if the state or such political subdivision determines that the  
57 prior resolution provides sufficient evidence to support the  
58 nondiscrimination agreement and warranty under subdivision (1) of  
59 this subsection. For the purposes of this section, "contract" includes  
60 any extension or modification of the contract, [and] "contractor"  
61 includes any successors or assigns of the contractor, "marital status"  
62 means being single, married as recognized by the state of Connecticut,  
63 widowed, separated or divorced, and "mental disability" means one or  
64 more mental disorders, as defined in the most recent edition of the  
65 American Psychiatric Association's "Diagnostic and Statistical Manual  
66 of Mental Disorders", or a record of or regarding a person as having  
67 one or more such disorders. For the purposes of this section, "contract"  
68 does not include a contract where each contractor is (A) a political  
69 subdivision of the state, including, but not limited to, a municipality,  
70 (B) a quasi-public agency, as defined in section 1-120, (C) any other  
71 state, as defined in section 1-267, (D) the federal government, (E) a  
72 foreign government, or (F) an agency of a subdivision, agency, state or  
73 government described in subparagraph (A), (B), (C), (D) or (E) of this  
74 subdivision.

75 Sec. 2. Section 4a-60a of the general statutes is repealed and the  
76 following is substituted in lieu thereof (*Effective October 1, 2009*):

77 (a) Every contract to which the state or any political subdivision of  
78 the state other than a municipality is a party shall contain the  
79 following provisions: (1) The contractor agrees and warrants that in  
80 the performance of the contract such contractor will not discriminate  
81 or permit discrimination against any person or group of persons on the  
82 grounds of sexual orientation, in any manner prohibited by the laws of  
83 the United States or of the state of Connecticut, and that employees are

84 treated when employed without regard to their sexual orientation; (2)  
85 the contractor agrees to provide each labor union or representative of  
86 workers with which such contractor has a collective bargaining  
87 agreement or other contract or understanding and each vendor with  
88 which such contractor has a contract or understanding, a notice to be  
89 provided by the Commission on Human Rights and Opportunities  
90 advising the labor union or workers' representative of the contractor's  
91 commitments under this section, and to post copies of the notice in  
92 conspicuous places available to employees and applicants for  
93 employment; (3) the contractor agrees to comply with each provision  
94 of this section and with each regulation or relevant order issued by  
95 said commission pursuant to section 46a-56; (4) the contractor agrees to  
96 provide the Commission on Human Rights and Opportunities with  
97 such information requested by the commission, and permit access to  
98 pertinent books, records and accounts, concerning the employment  
99 practices and procedures of the contractor which relate to the  
100 provisions of this section and section 46a-56. Prior to entering into the  
101 contract, the contractor shall provide the state or such political  
102 subdivision of the state a written representation to support the  
103 nondiscrimination agreement and warranty under subdivision (1) of  
104 this subsection for any contract valued at less than fifty thousand  
105 dollars for each year of the contract, and with documentation in the  
106 form of a company or corporate policy adopted by resolution of the  
107 board of directors, shareholders, managers, members or other  
108 governing body of such contractor to support the nondiscrimination  
109 agreement and warranty under subdivision (1) of this subsection for  
110 any contract valued at fifty thousand dollars or more for any year of  
111 the contract. The state or such political subdivision of the state may  
112 accept a prior resolution of such contractor if the state or such political  
113 subdivision determines that the prior resolution provides sufficient  
114 evidence to support the nondiscrimination agreement and warranty  
115 under subdivision (1) of this subsection. For the purposes of this  
116 section, "contract" includes any extension or modification of the  
117 contract, and "contractor" includes any successors or assigns of the  
118 contractor. For the purposes of this section, "contract" does not include

119 a contract where each contractor is (A) a political subdivision of the  
120 state, including, but not limited to, a municipality, (B) a quasi-public  
121 agency, as defined in section 1-120, (C) any other state, as defined in  
122 section 1-267, (D) the federal government, (E) a foreign government, or  
123 (F) an agency of a subdivision, agency, state or government described  
124 in subparagraph (A), (B), (C), (D) or (E) of this subdivision.

125 (b) The contractor shall include the provisions of subsection (a) of  
126 this section in every subcontract or purchase order entered into in  
127 order to fulfill any obligation of a contract with the state and such  
128 provisions shall be binding on a subcontractor, vendor or  
129 manufacturer unless exempted by regulations or orders of the  
130 commission. The contractor shall take such action with respect to any  
131 such subcontract or purchase order as the commission may direct as a  
132 means of enforcing such provisions including sanctions for  
133 noncompliance in accordance with section 46a-56; provided, if such  
134 contractor becomes involved in, or is threatened with, litigation with a  
135 subcontractor or vendor as a result of such direction by the  
136 commission, the contractor may request the state of Connecticut to  
137 enter into any such litigation or negotiation prior thereto to protect the  
138 interests of the state and the state may so enter.

139 Sec. 3. Subsection (a) of section 4a-60g of the general statutes is  
140 repealed and the following is substituted in lieu thereof (*Effective*  
141 *October 1, 2009*):

142 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
143 the following terms have the following meanings:

144 (1) "Small contractor" means any contractor, subcontractor,  
145 manufacturer or service company (A) that has been doing business  
146 under the same ownership or management and has maintained its  
147 principal place of business in the state, for a period of at least one year  
148 immediately prior to the date of application for certification under this  
149 section, (B) that had gross revenues not exceeding fifteen million  
150 dollars in the most recently completed fiscal year prior to such  
151 application, and (C) at least fifty-one per cent of the ownership of

152 which is held by a person or persons who exercise operational  
153 authority over the daily affairs of the business and have the power to  
154 direct the management and policies and receive the beneficial interests  
155 of the business, except that a nonprofit corporation shall be construed  
156 to be a small contractor if such nonprofit corporation meets the  
157 requirements of subparagraphs (A) and (B) of this subdivision.

158 (2) "State agency" means each state board, commission, department,  
159 office, institution, council or other agency with the power to contract  
160 for goods or services itself or through its head.

161 (3) "Minority business enterprise" means any small contractor (A)  
162 fifty-one per cent or more of the capital stock, if any, or assets of which  
163 are owned by a person or persons (i) who exercise operational  
164 authority over the daily affairs of the enterprise, (ii) who have the  
165 power to direct the management and policies and receive the beneficial  
166 interest of the enterprise, and (iii) who are members of a minority, as  
167 such term is defined in subsection (a) of section 32-9n, (B) who is an  
168 individual with a disability, or (C) which is a nonprofit corporation in  
169 which fifty-one per cent or more of the persons who (i) exercise  
170 operational authority over the enterprise, and (ii) have the power to  
171 direct the management and policies of the enterprise are members of a  
172 minority, as defined in this subsection, or are individuals with a  
173 disability.

174 (4) "Affiliated" means the relationship in which a person directly, or  
175 indirectly through one or more intermediaries, controls, is controlled  
176 by or is under common control with another person.

177 (5) "Control" means the power to direct or cause the direction of the  
178 management and policies of any person, whether through the  
179 ownership of voting securities, by contract or through any other direct  
180 or indirect means. Control shall be presumed to exist if any person,  
181 directly or indirectly, owns, controls, holds with the power to vote, or  
182 holds proxies representing, twenty per cent or more of any voting  
183 securities of another person.

184 (6) "Person" means any individual, corporation, limited liability  
185 company, partnership, association, joint stock company, business trust,  
186 unincorporated organization or other entity.

187 (7) "Individual with a disability" means an individual (A) having a  
188 physical or mental impairment that substantially limits one or more of  
189 the major life activities of the individual, which mental impairment  
190 may include, but is not limited to, having one or more mental  
191 disorders, as defined in the most recent edition of the American  
192 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
193 Disorders", or (B) having a record of such an impairment.

194 (8) "Nonprofit corporation" means a nonprofit corporation  
195 incorporated pursuant to chapter 602 or any predecessor statutes  
196 thereto.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	4a-60(a)
Sec. 2	October 1, 2009	4a-60a
Sec. 3	October 1, 2009	4a-60g(a)

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

This bill adds mental disability as a classification to the state contracting nondiscrimination requirements and provides other clarifications. There is no anticipated fiscal impact associated with this bill.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None



**OLR Bill Analysis****sSB 1127*****AN ACT CONCERNING THE APPLICABILITY OF CERTAIN STATE CONTRACTING NONDISCRIMINATION REQUIREMENTS.*****SUMMARY:**

Under current law all state contracts and contracts of political subdivisions, other than municipalities, must contain anti-discrimination provisions that protect people based on race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability, or sexual orientation. This bill defines “marital status” as being single, married under Connecticut law, widowed, separated, or divorced.

The bill (1) restricts the state and political subdivision contracts that must contain an anti-discrimination provision, (2) expands the categories of protected people include people with mental disabilities, and (3) establishes different supportive data that contractors must provide before entering a contract. Under the bill, “mental disability” means one or more mental disorders, as defined in the latest edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*.

The bill applies this definition to “mental impairment” as that term is used in the small business and minority enterprise program. This means that a small contractor with at least one of these disorders that substantially limits one or more of his or her major life activities meets the definition of a minority enterprise. By law, state and quasi-public agencies and political subdivisions, other than municipalities, must set aside a percentage of the contracts they award for construction, goods, and services each year for small contractors and minority business enterprises.

EFFECTIVE DATE: October 1, 2009

## **CONTRACTS ANTI-DISCRIMINATION PROVISION**

### ***Contracts Requiring the Provision***

Under current law all state contracts and contracts of political subdivisions, other than municipalities, must contain anti-discrimination provisions. The bill limits this requirement by exempting contracts between governmental or quasi-governmental entities. Specifically, the requirement does apply to contracts in which each contractor is (1) a political subdivision, including a municipality; (2) a quasi-public agency; (3) another state; (4) the federal government; (5) a foreign government; or (6) an agency of any of the above.

### ***Categories of People Protected by the Provisions***

The bill requires that these contracts require contractors to agree (1) not to discriminate or permit anyone to discriminate against anyone with mental disabilities and (2) not to treat their employees differently because of a mental disability unless the disability prevents the person from performing a job.

### ***Supportive Data***

Under current law, contractors must provide their company's anti-discrimination policy adopted by a resolution of its governing body before entering a contract with the state or a political subdivision. The bill limits this requirement to contracts valued at \$50,000 or more for any year of the contract and permits the contracting entity to accept an earlier resolution if there is sufficient evidence to support the anti-discrimination agreement and warranty.

For contracts below this threshold, the bill requires a contractor to give the state or the political subdivision, as applicable, a written representation that supports the nondiscrimination agreement and warranty.

## **BACKGROUND**

### ***Diagnostic and Statistical Manual of Mental Disorders***

The manual (known as the “DSM-IV”) lists approximately 400 disorders of varying degrees of severity. It is the standard classification of mental disorders used by mental health professionals in the United States. It was substantially revised in 1994. The next major revision is anticipated for 2011 or later.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea    39    Nay   0    (03/31/2009)